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7 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

8
9 MICHELE AMMONS,
10
11 Plaintiff,

12 v.

13 DIVERSIFIED ADJUSTMENT
14 SERVICE, INC.,
15 Defendant.
16

Case No. 2:18-cv-6489

**COMPLAINT AND DEMAND FOR
JURY TRIAL FOR VIOLATIONS
OF:**

1. Telephone Consumer Protection Act,
47 U.S.C. § 227 *et seq.*;
2. Fair Debt Collection Practices Act,
15 U.S.C. § 1692 *et seq.*;
3. CAL. CIV. CODE § 1788 *et seq.*; and
4. Intrusion Upon Seclusion

17 **COMPLAINT AND DEMAND FOR JURY TRIAL**

18 Plaintiff Michele Ammons (“Plaintiff”), by and through her attorneys, alleges
19 the following against Defendant Diversified Adjustment Service, Inc.
20 (“Defendant”):

21 **INTRODUCTION**

22 1. Count I of Plaintiff’s Complaint is based upon the Telephone Consumer
23 Protection Act (“TCPA”), 47 U.S.C. § 227. The TCPA is a federal statute that
24 broadly regulates the use of automated telephone equipment. Among other things,
25 the TCPA prohibits certain unsolicited marketing calls, restricts the use of automatic
26 dialers or prerecorded messages, and delegates rulemaking authority to the Federal
27 Communications Commission (“FCC”).

28 2. Count II of Plaintiff’s Complaint is based upon Fair Debt Collection Practices

1 Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, which prohibits debt collectors from
2 engaging in abusive, deceptive, and unfair practices in connection with the
3 collection of consumer debts.

4 3. Count III of Plaintiff's Complaint is based upon Rosenthal Fair Debt
5 Collection Practices Act ("RFDCPA"), CAL. CIV. CODE § 1788 *et seq.*, which
6 prohibits debt collectors from engaging in abusive, deceptive and unfair practices in
7 connection with the collection of consumer debts.

8 4. Count IV of Plaintiff's Complaint is based upon the Invasion of Privacy -
9 Intrusion upon Seclusion, as derived from § 652B of the Restatement (Second) of
10 Torts. § 652B prohibits an intentional intrusion, "physically or otherwise, upon the
11 solitude or seclusion of another or his private affairs or concerns... that would be
12 highly offensive to a reasonable person."

13 **JURISDICTION AND VENUE**

14 5. Jurisdiction of this court arises under 47 U.S.C. § 227 *et seq.* and 28 U.S.C.
15 1331.

16 6. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part
17 of the events or omissions giving rise to the claim occurred in this District. Because
18 Defendant transacts business here, personal jurisdiction is established.

19 **PARTIES**

20 7. Plaintiff is a natural person residing in the Bakersfield, Kern County,
21 California.

22 8. Defendant is a debt collector with its principal place of business located at
23 600 Coon Rapids Blvd., Minneapolis, Minnesota 55433 and can be served through
24 its registered agent at CT Corporation System, Inc., 1010 Dale St. N., St. Paul, MN
25 55117-5603.

26 9. Defendant's principal purpose is the collection of debts and regularly collects
27 or attempts to collect debts owed, or due, or asserted to be owed or due by another.
28 Defendant regularly uses the telephone and mail to engage in the business of

1 collecting debt in several states, including California. Thus, Defendant is a “debt
2 collector” as defined by the FDCPA, 15 U.S.C. § 1692a(6).

3 10. Defendant acted through its agents, employees, officers, members, directors,
4 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives,
5 and insurers.

6 **FACTUAL ALLEGATIONS**

7 11. In or around February 2018, in an attempt to collect on an alleged consumer
8 account, Defendant began calling Plaintiff on her cellular phone number ending in
9 3436.

10 12. Upon information and belief, in an attempt to hide its true identity and to trick
11 Plaintiff into answering its phone calls, Defendant called Plaintiff from what appear
12 to have been spoofed phone numbers: (661) 454-0526; (661) 454-0643; (661) 454-
13 0745; (661) 454-5515; (661) 454-5516.

14 13. On or about February 26, 2018, at 5:54 p.m., Plaintiff received a call on her
15 cell phone from (661) 454-5516. During this conversation, Plaintiff spoke with a
16 representative who was attempting to collect a debt; during the call, Plaintiff
17 unequivocally revoked consent to be contacted any further.

18 14. Despite revoking consent Plaintiff continued to receive phone calls from
19 Defendant.

20 15. On or about March 12, 2018, at 10:03 a.m., Plaintiff received a call on her cell
21 phone from (661) 454-5979. During this call Defendant attempted to collect a debt
22 from Plaintiff. Plaintiff informed the representative that she was going through a
23 financial hardship and once again unequivocally requested not to be contacted on
24 her cell phone any further.

25 16. Despite Plaintiff’s pleas, Defendant continued to call Plaintiff on her cell
26 phone without consent.

27

28

1 17. Between February 26, 2018 and May 3, 2018, Defendant willfully called
2 Plaintiff on her cellular phone approximately seventy (70) times to annoy and harass
3 Plaintiff in the hopes that it could induce Plaintiff to pay the debt.

4 18. Defendant called Plaintiff up to five (5) times a day.

5 19. For example, on April 19, 2018, Defendant called at 9:14 a.m., 9:59 a.m.,
6 1:45 p.m., 3:26 p.m., and 5:44 p.m.

7 20. Each time Plaintiff received a phone call from Defendant there was a brief
8 pause prior to speaking with a representative, indicating the use of an automatic
9 telephone dialing system.

10 21. On many occasions, Defendant also left pre-recorded or artificial voice
11 messages for Plaintiff.

12 22. The majority of the calls that Plaintiff received were during working hours,
13 which often led to interruptions in her workday.

14 23. Plaintiff works in a warehouse which requires her full attention throughout
15 her workday.

16 24. Unfortunately, due to the constant calls from Defendant, Plaintiff would often
17 have to stop focusing on her job to see who was calling, which can be a safety hazard.

18 25. Plaintiff has been struggling financially and has been working hard to stay on
19 top of her financial obligations.

20 26. However, Plaintiff's husband lost his job a couple of years ago and Plaintiff
21 has been the only income her in household since then.

22 27. Plaintiff is under an immense amount of stress and Defendant's calls have
23 only exacerbated her stress.

24 28. Due to Defendant's actions, Plaintiff has suffered emotional distress, invasion
25 of privacy, and actual damages.

26 29. Plaintiff attempted to resolve this matter pre-litigation by sending a demand
27 letter via certified mail to Defendant at its address in Minnesota.
28

1 30. Tracking indicates that the demand letter was delivered to 600 Coon Rapids
2 Blvd., Minneapolis, Minnesota 55433 on June 7, 2018.

3 31. Plaintiff requested that Defendant respond to the demand letter by July 6,
4 2018, but never received a response.

5 32. As of the date of the filing of this Complaint, Defendant has not reached out
6 to address the allegations raised in the Complaint.

7 **COUNT I**

8 **(Violations of the TCPA, 47 U.S.C. § 227)**

9 33. Plaintiff incorporates by reference paragraphs one (1) through thirty-two (32)
10 of this Complaint as though fully stated herein.

11 34. Defendant violated the TCPA. Defendant's violations include, but are not
12 limited to the following:

13 a. Within four years prior to the filing of this action, on multiple
14 occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which
15 states in pertinent part, "It shall be unlawful for any person within the United
16 States . . . to make any call (other than a call made for emergency
17 purposes or made with the prior express consent of the called party) using any
18 automatic telephone dialing system or an artificial or prerecorded voice — to
19 any telephone number assigned to a . . . cellular telephone service . . . or any
20 service for which the called party is charged for the call.

21 b. Within four years prior to the filing of this action, on multiple
22 occasions, Defendant willfully and/or knowingly contacted Plaintiff using an
23 artificial prerecorded voice or an automatic telephone dialing system and as
24 such, Defendant knowing and/or willfully violated the TCPA.

25 35. The Federal Communications Commission ("FCC") noted in its 2003 TCPA
26 Order that a predictive dialer is "equipment that dials numbers and, when certain
27 computer software is attached, also assists telemarketers in predicting when a sales
28 agent will be available to take calls. The hardware, when paired with certain

1 software, has the capacity to store or produce numbers and dial those numbers at
 2 random, in sequential order, or from a database of numbers.” *2003 TCPA Order*, 18
 3 FCC Rcd at 14091, para. 131.

4 36. The FCC further explained that the “principal feature of predictive dialing
 5 software is a timing function, not number storage or generation.” *Id.*

6 37. Finally, the FCC stated that “a predictive dialer falls within the meaning and
 7 statutory definition of ‘automatic telephone dialing equipment’ and the intent of
 8 Congress.” *Id.* at 14091-92, paras. 132-33.

9 38. As a result of Defendant’s violations of 47 U.S.C. § 227, Plaintiff is entitled
 10 to an award of five hundred dollars (\$500.00) in statutory damages, for each and
 11 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that
 12 Defendant knowingly and/or willfully violated the TCPA, Plaintiff is entitled to an
 13 award of one thousand five hundred dollars (\$1,500.00), for each and every violation
 14 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

15 39. Plaintiff is informed and believes such acts directed towards Plaintiff were
 16 carried out with a conscious disregard of Plaintiff’s right to be free from such
 17 behavior, such as to constitute oppression, fraud or malice pursuant to CAL. CIV.
 18 CODE § 3294, entitling Plaintiff to punitive damages in the amount appropriate to
 19 punish and set an example of Defendant.

20 **COUNT II**

21 **(Violations of 15 U.S.C. § 1692 *et seq.*)**

22 40. Plaintiff incorporates by reference paragraphs one (1) through thirty-two (32)
 23 of this Complaint as though fully stated herein.

24 41. Defendant violated the FDCPA. Defendant’s violations include, but are not
 25 limited to, the following:

26 a. Defendant violated 15 U.S.C. § 1692d by engaging in conduct, the
 27 natural consequence of which is to harass, oppress or abuse any person in
 28 connection with the collection of the alleged debt;

b. Defendant violated 15 U.S.C. § 1692d(5) by causing Plaintiff's phone to ring or engaging Plaintiff in telephone conversations repeatedly; and

c. Defendant violated 15 U.S.C. § 1692f by using unfair or unconscionable means in connection with the collection of an alleged debt.

42. Defendant's acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

43. As a result of the foregoing violations of the FDCPA, Defendant is liable to Plaintiff for actual damages, statutory damages, and attorneys' fees and costs.

44. Plaintiff is informed and believes such acts directed towards Plaintiff were carried out with a conscious disregard of Plaintiff's right to be free from such behavior, such as to constitute oppression, fraud or malice pursuant to CAL. CIV. CODE § 3294, entitling Plaintiff to punitive damages in the amount appropriate to punish and set an example of Defendant.

COUNT III

(Violations of CAL. CIV. CODE § 1788 *et seq.*)

45. Plaintiff incorporates by reference paragraphs one (1) through thirty-two (32) of this Complaint as though fully stated herein.

46. Defendant violated the RFDCPA. Defendant's violations include, but are not limited to, the following:

d. Defendant violated CAL. CIV. CODE § 1788.11(d) by causing a telephone to ring repeatedly or continuously to annoy the person called;

e. Defendant violated CAL. CIV. CODE § 1788.17 by collecting or attempting to collect a consumer debt without complying with the provisions of Sections 1692b to 1692j, inclusive, of . . . Title 15 of the United States Code (Fair Debt Collection Practices Act).

i. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692d by engaging in conduct, the natural consequence of which is to harass, oppress or abuse any person in connection with the

1 collection of the alleged debt; and

2 ii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15
3 U.S.C. § 1692d(5) by causing Plaintiff's phone to ring or engaging
4 Plaintiff in telephone conversations repeatedly;

5 iii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15
6 U.S.C. § 1692f by using unfair or unconscionable means in connection
7 with the collection of an alleged debt; and

8 47. Defendant's acts, as described above, were done intentionally with the
9 purpose of coercing Plaintiff to pay the alleged debt.

10 48. As a result of the foregoing violations of the RFDCPA, Defendant is liable to
11 Plaintiff for actual damages, statutory damages, and attorneys' fees and costs.

12 49. Plaintiff is informed and believes such acts directed towards Plaintiff were
13 carried out with a conscious disregard of Plaintiff's right to be free from such
14 behavior, such as to constitute oppression, fraud or malice pursuant to CAL. CIV.
15 CODE § 3294, entitling Plaintiff to punitive damages in the amount appropriate to
16 punish and set an example of Defendant.

17 **COUNT IV**

18 **(Intrusion Upon Seclusion)**

19 50. Plaintiff incorporates by reference paragraphs one (1) thirty-two (32) of this
20 Complaint as though fully stated herein.

21 51. Restatement of the Law, Second, Torts, § 652(b) defines intrusion upon
22 seclusion as, "One who intentionally intrudes... upon the solitude or seclusion of
23 another, or his private affairs or concerns, is subject to liability to the other for
24 invasion of privacy, if the intrusion would be highly offensive to a reasonable
25 person".

26 52. Defendant violated Plaintiff's privacy. Defendant's violations include, but are
27 not limited to, the following:
28

1 a. Defendant intentionally intruded, physically or otherwise, upon
 2 Plaintiff's solitude and seclusion by engaging in harassing phone calls in an
 3 attempt to collect on an alleged debt despite numerous requests for the calls
 4 to cease.

5 b. The number and frequency of the telephone calls to Plaintiff by
 6 Defendant after several requests for the calls to cease constitute an intrusion
 7 on Plaintiff's privacy and solitude.

8 c. Defendant's conduct would be highly offensive to a reasonable person
 9 as Plaintiff received calls that often interrupted Plaintiff's work and sleep
 10 schedule.

11 d. Defendant's acts, as described above, were done intentionally with the
 12 purpose of coercing Plaintiff to pay the alleged debt.

13 53. As a result of Defendant's violations of Plaintiff's privacy, Defendant is liable
 14 to Plaintiff for actual damages.

15 54. Plaintiff is informed and believes such acts directed towards Plaintiff were
 16 carried out with a conscious disregard of Plaintiff's right to be free from such
 17 behavior, such as to constitute oppression, fraud or malice pursuant to CAL. CIV.
 18 CODE § 3294, entitling Plaintiff to punitive damages in the amount appropriate to
 19 punish and set an example of Defendant.

20 PRAYER OF RELIEF

21 **WHEREFORE**, Plaintiff Michele Ammons, respectfully requests judgment be
 22 entered against Defendant Diversified Adjustment Service, Inc. for the following:

23 55. Statutory damages of \$500.00 for each and every negligent violation of the
 24 TCPA pursuant to 47 U.S.C. § (b)(3)(B);

25 56. Statutory damages of \$1500.00 for each and every knowing and/or willful
 26 violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(B) and 47 U.S.C. § (b)(3)(C);

27 57. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
 28

1 58. Statutory damages of \$1000.00 pursuant to the Fair Debt Collection Practices
2 Act, 15 U.S.C. § 1692k(a)(2);

3 59. Costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1692k(a)(3);

4 60. Statutory damages of \$1,000.00 pursuant to the RFDCPA, CAL. CIV. CODE
5 §1788.30(b);

6 61. Actual damages pursuant to RFDCPA, CAL. CIV. CODE §1788.30(b);

7 62. Costs and reasonable attorneys' fees pursuant to the RFDCPA, CAL. CIV.
8 CODE §1788.30(c);

9 63. Punitive damages pursuant to CAL. CIV. CODE § 3294.

10 64. Awarding Plaintiff any pre-judgment and post-judgment interest as may be
11 allowed under the law; and

12 65. Any other relief that this Honorable Court deems appropriate.

13
14 Respectfully submitted this 27th day of July 2018.

15
16 **PRICE LAW GROUP, APC**

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